



NAO  
NATIONAL AUDIT OFFICE

Report by the  
Comptroller and  
Auditor General

# Monitoring and Control of Charities in England and Wales

Ordered by the House of Commons to be printed  
12 November 1990

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# Monitoring and Control of Charities in England and Wales

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This report has been prepared under Section 6 of the National Audit Act, 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn  
Comptroller and Auditor General

National Audit Office  
9 November 1990

The Comptroller and Auditor General is the head of the National Audit Office employing some 900 staff. He, and the NAO, are totally independent of Government. He certifies the accounts of all Government departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies use their resources.



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# Report

1. In October 1987, following a report by the National Audit Office (HC 380 of 1986–87) and a subsequent efficiency scrutiny (the Woodfield Report), the Committee of Public Accounts examined the Charity Commission about its failure to provide adequate monitoring and control of charities in England and Wales. In their Sixteenth Report, Session 1987–88 (HC 116), the Committee expressed grave concern at the resulting risk of fraud, abuse, and maladministration involved in the massive and increasing resources devoted to charities. The Committee strongly supported the need for legislation which the Government hoped to propose later in this Parliament to strengthen the Commission's powers for registering charities, obtaining accounts, and investigating fraud, abuse and maladministration. But they emphasised that prompt and vigorous action was required without delay to improve supervision of charities within existing powers.

2. In the Treasury Minute of 27 April 1988 (Cm 367) the Commission shared the Committee's concern and outlined improvements being put in hand in advance of legislation, following the Government's acceptance of the Woodfield Report. The Government proposals for legislation were published in May 1989 (Cm 694) and were expected to be presented to Parliament in the next Parliamentary Session.

3. This report records progress towards implementing the Committee's findings and recommendations on the register of charities, submission of accounts, investigation of fraud, abuse and maladministration, and implementation of the Woodfield Report recommendations. It sets out:

- the main conclusions and recommendations of the Committee (see Appendix 1);
- the Treasury Minute response; and
- subsequent developments, including the proposals for legislation.

## Register of charities

4. The National Audit Office's 1987 report found that the Charity Commission's register of public information about charities was unreliable and out of date. Thousands of changes in registered details were not notified to the Commission and remained undetected; nor was the Commission likely to know whether a charity had failed to register, unless it became aware of this from outside sources. The National Audit Office concluded that the fault for this lay partly with the Commission, who had not given the task sufficient attention even within its constrained staff resources, partly with trustees who did not notify relevant changes in the information registered, and partly with the inappropriate remedies for enforcement.



**Committee conclusions and recommendations (i), (ii), (ix) and (x)**

5. The Committee were disturbed to learn that the Commission's register was seriously out of date and unreliable and was ineffective for the monitoring and supervision of charities necessary to safeguard the interests of those benefiting from or contributing to charities. They believed that, notwithstanding its resource difficulties, the Commission had adopted a passive attitude to its registration responsibilities and this had to change.

6. However, the Committee recognised that improvements would not be possible without computerisation of the register and effective sanctions against charities who failed to notify the Commission of significant changes. They strongly supported the need for legislation to improve the Commission's legal sanctions and recommended that the Commission should take all practicable steps not requiring legislation to secure necessary improvements, including computerisation of the register.

**Treasury Minute**

7. The Treasury Minute shared the Committee's concern that in certain important respects the register of charities was deficient. The Commission said it had long recognised that an up-to-date computerised register would provide a much improved source of public information about registered charities and a strong foundation for a more effective system of supervision. Following the Government's acceptance of the Woodfield Report in January 1988, planning the requirements for a computerised register had been put in hand as a high priority.

**Subsequent developments****(a) Computerisation**

8. In October 1988 the Commission appointed consultants to carry out a feasibility study of the options for a computer database system to support three main activities:

- the basic register of charities, providing the Commission and the public with basic financial data and other information about individual charities;
- monitoring to identify charities for examination and investigation;
- casework analysis, providing the management statistics required for assessing workload, deciding priorities between investigation and other functions, and controlling workflows.

9. In August 1989 the consultants recommended and the Commission accepted that the most cost-effective option was to install a database system in three phases over a period of four years. This will provide initially the basic register of charities, followed by the facilities for monitoring and casework. Development and installation of the complete system is expected to cost £6.8 million at 1989-90 prices.



10. The Commission started development of the first phase in October 1989 and the computerised register went live in October 1990, after transfer of existing registration information from the manual records. It plans to check this information by sending confirmation questionnaires to charities, at the same time calling for their accounts and using voluntary agencies on a trial basis to trace charities who do not respond to these enquiries. The start of this part of the programme has been deferred by six months in the face of public expenditure constraints. But the Commission expects the new register to be 80-90 per cent accurate by 1993-94, when the monitoring and casework phases of the system are also due to be completed.

11. The Commission plans to keep the new system up-to-date by requiring charities to submit annual returns of key information, including some of the legal and administrative details recommended in the Accounting Standards Committee's Statement of Recommended Practice for Charity Accounts (see paragraph 21). The annual return will also include details needed by the Commission for its monitoring and investigative functions. The Commission is now testing the details of this initiative and a full monitoring system will be put in place following legislation on which it depends.

#### (b) Sanctions against defaulting charities

12. Under existing legislation the only direct sanction the Commission has against charities failing to apply for registration or notify changes to existing registration details is unwieldy: an order of the Commissioners requiring compliance has to be supported by cumbersome contempt procedures. But the Government have decided not to seek additional statutory powers. They agreed with the conclusions of the Woodfield Report that financial penalties would be inappropriate. They also considered that making tax and rate reliefs conditional on registration would be complex to administer and inequitable for those charities which did not claim either relief.

13. The Woodfield Report recommended that where unregistered inactive charities came to notice, for example where they approached the Commission for advice or consent to sell land, the Commission should insist on their registration before dealing with them. However, the Government considered that such charities might do little positive harm; and there were circumstances where refusing to do business before registration would clearly be counter-productive, for example where improving inadequate trust deeds before registration could save the Commission time, trouble and expense later. They believed, therefore, that it should remain open to the Commission to respond flexibly in cases of this kind.

14. The Government propose to introduce the same sanctions against any registered charity failing to submit an annual return to update its registration details as will be applied for non-submission of accounts (see paragraph 18 below). In particular, the Commission will mark the charity's entry on the register, and publicise this as necessary, as an indication that the charity has failed to fulfil its accountability requirements. This could also lead to an investigation by the Commission.

## **Submission of Accounts**

15. The National Audit Office's 1987 report revealed that the statutory and non-statutory requirements for the submission of annual charity accounts were being widely ignored by large numbers of charities, and were not effectively enforced by the Commission. Furthermore, even when accounts were submitted, there was no standard format and more than two-thirds were not professionally audited. The Commission told the Committee that it had no immediate legal redress against those charities failing to submit annual accounts. Nor did it have the resources necessary to devise and publish an annual list of them, as suggested by the Committee. Moreover, there was no general requirement for charity accounts to be audited. Nor was there an established standard format for accounts which would provide the right information for selective monitoring of different kinds and levels of expenditure, though the accountancy institutes had been considering this and were about to make final recommendations.

### **Committee conclusions and recommendations (iii), (ix) and (x)**

16. The Committee were disturbed at the widespread failure of the Commission to obtain annual accounts and to analyse and follow up such information. This undermined efficient and effective monitoring and, given the risks involved, the Committee found it difficult to accept that staff shortages were a satisfactory explanation. They strongly supported the need for legislation to increase the Commission's powers and recommended that the Commission should take all practicable steps not requiring legislation to secure necessary improvements, including publication of the names of charities failing to submit accounts.

### **Treasury Minute**

17. In the Treasury Minute the Commission said it believed that effective sanctions were required to enforce the statutory obligation on trustees to supply copies of their accounts. And stronger powers to take remedial action were part of the Woodfield reforms which had been accepted by the Government for inclusion in their proposals for new legislation. Computerisation of the charities register would make it possible readily to identify publicly those charities whose trustees were in default or who were under investigation.

### **Subsequent developments**

#### **(a) Non-submission of accounts**

18. The Government subsequently rejected the Woodfield Report recommendation that the Commission should be empowered to deregister defaulting charities, agreeing with the Commission's view that deregistration should continue to be restricted to the loss of charitable status in law. Instead they propose, among other things, to introduce the further sanction of marking a charity's entry in the register, and publicising the fact, as proposed for failure to submit annual returns (paragraph 14 above). Moreover, persistent failure to provide accounts would be taken to indicate serious mismanagement, possibly amounting to breach of trust, and as justifying the Commission in using its legal powers to protect the charity's assets and where



necessary to prevent the charity from raising further money from the public. The Government consider that, taken together, these measures should provide effective sanctions.

19. The Commission started to call in accounts of all active registered charities in October 1990 when the new computerised system made this a viable proposition. In the meantime the legislative requirements have continued to be widely ignored. In 1989 only 15,200 accounts were submitted, though another 3,300 were received as a result of prompting by the Commission. The total of 18,500 represented about 11 per cent of registered charities.

#### (b) Requirement and format for accounts

20. Following the recommendations of the Woodfield Report, legislation is proposed to relate accounting requirements to the size of a charity. The Government are considering using income as the sole criterion for deciding this; in their view taking account of assets might be confusing and could involve charities in considerable expense for professional valuations. Under the Government's proposals charities with an annual income of less than £5,000 will have the option of producing a simple receipts and payments account, together with a statement of assets and liabilities instead of a full income and expenditure account with balance sheet.

21. In May 1988, following extensive consultation with the Commission and other bodies, the Accounting Standards Committee published a Statement of Recommended Practice for charity accounts. This recommended that, in addition to the statement of account itself, all charities should produce a trustees's report or equivalent statement setting out the charity's objectives and activities. The report should also give legal or administrative details such as the names of trustees and the principal officers. Given the wide diversity of charities the Government do not think it would be practicable to require all charities to follow the Statement of Recommended Practice in all respects. Thus, with the exception of charitable companies which have obligations to report under the Companies Acts, only those charities with an annual income of £25,000 or more will be required by the Commission to indicate reasons for any departure in their accounts from the recommendations of the Statement.

22. The Commission intends to continue its practice of producing different model forms of account for charities to follow. Given the wide variety of charities, the Commission considers that the imposition of a common standard across the board would be impracticable.

#### (c) Audit of accounts

23. There is no general statutory requirement for the accounts of a charity to be audited, although some charities are subject to audit requirements imposed by other statutory authorities or by the terms of their governing instruments. The Government agreed with the Woodfield Report that this was unsatisfactory. However, the Government considered that in view of the potential cost it would be



unreasonable to insist that the accounts of all charities, however small, should be professionally audited. Their proposed legislation therefore provides that, whilst all accounts should be independently examined, only those charities with incomes exceeding £50,000 will be required to have their accounts professionally audited. The Commission is seeking the advice of accounting bodies to determine what the responsibilities and liabilities of non-professional independent examiners should be and to provide audit guidelines for their benefit.

**Investigation of fraud,  
abuse and  
maladministration**

24. The National Audit Office's 1987 report pointed out that the Commission's monitoring and control of charities had been severely restricted by its efforts to respond to large increases in statutory demand-led tasks, and by constrained staff resources. The Commission had recently increased the number of staff employed on this work and had established closer liaison with Inland Revenue to deal with cases where there was evidence of charities using funds for non-charitable purposes. But in the National Audit Office's view a new impetus was needed to the Commission's monitoring and control, to seek out and pursue abuse more actively and to provide more positive assurances on the efficiency and effectiveness of charity operations.

**Committee conclusions and recommendations (iv)–(x)**

25. The Committee were gravely concerned at the risk of fraud, abuse and maladministration in charities and felt that the Commission was too complacent on this issue, given its lack of reliable information about the problem. They regarded it as unsatisfactory that the Commission had not devoted greater resources to monitoring and investigation work and that they had never established a system of positive inspection of selected charities. Given the need for expert analysis of accounts and financial information, they were astonished that the Commission had no qualified accountants on its staff.

26. The Committee noted the Commission's view that it had been hampered by inadequate resources and the pressures arising from its statutory duties to provide advice and deal with the modernisation of charity schemes. But they could not accept this as sufficient justification for the Commission's failure to take more active steps to monitor and investigate charities. And they noted the Treasury's view, supported by the efficiency scrutiny, that there was scope for better deployment of existing staff through an improved resource management system.

27. The Committee strongly supported the need for legislation to improve the Commission's supervision of charities. They also recommended that the Commission should take all practicable steps not requiring legislation to secure necessary improvements, including better and more frequent examination of accounts with follow-up investigations and firm remedial action where appropriate. In their view there was a need for better training of investigative staff, together with a more positive attitude by senior management to this very important area of the Commission's responsibilities.

### Treasury Minute

28. In the Treasury Minute the Commission agreed that the present risk of abuse of charitable status was unacceptable, and it confirmed that it was taking urgent measures to improve the monitoring and supervising of charities in advance of legislation to strengthen its powers. Staff had been redeployed from other work to increase to 14 the numbers engaged in investigations; and other staff were giving a higher priority to monitoring the financial probity of charities seeking registration, advice or approval of major financial transactions. An accountant had been appointed to help identify those types of charity which most needed scrutiny and to develop a comprehensive training programme in accountancy skills for staff employed on monitoring and investigation work. And development of a sustained and properly targeted system of monitoring would be accompanied by the vigorous investigation of cases of alleged abuse brought to the Commission's attention.

### Subsequent developments

#### (a) Staff resources and training

29. In January 1989 the staff complement for monitoring and investigation was increased from 14 to 40. But the additional posts were not all filled until February 1990, mainly because of recruitment difficulties in London. At that time the Commission appointed another accountant to work part-time. This followed the appointment in September 1989 of a senior manager with investigation experience in the Customs and Excise Department to direct the Commission's increasing monitoring and investigation work.

30. The Commission has experienced difficulty in presenting a convincing case to the Treasury for some additional posts, because of the lack of a management information system covering performance standards and output measurement which could demonstrate that existing staff were being used in the most efficient way. However, the Commission decided not to proceed with a bid for a further substantial increase in manpower in 1990-91 in the face of public expenditure constraints and its decision to limit its pilot studies into monitoring systems to a more selective but smaller number of charities. And it has not sought to redeploy more staff to monitoring and investigation from other areas of work since additional staff are now required in other areas to cope with the management of other major developments, such as the proposal to divest the Official Custodian of his investment responsibilities and the work flowing from updating the register.

31. At 31 August 1990 the Commission employed 484 staff, 29 short of its approved complement. Appendix 2 shows the distribution of these staff by function compared with the position at about the time of the National Audit Office report in 1987.

32. Under the direction of the accountant, staff training in basic accounting skills and interpretation of accounts has been expanded. All monitoring and investigation staff completed an initial course by April 1990; and they are expected by December 1990 to complete further

courses tailored to meet the Commission's monitoring and investigation requirements. The Commission considers that the training has led to significant improvements in the identification of cases for examination and in the quality of the resulting investigations.

(b) Extent and results of investigations

33. The Commission's monitoring and investigation division is located partly in London and partly in Liverpool. The two locations tested different management information systems and, as a result, a common pilot system was introduced in February 1990 to identify the use of resources and provide information on the extent and outcome of investigations into particular charities.

34. The information available indicates that the London Section investigated 416 cases in 1988 and 459 cases in 1989; and 25 per cent of the total resulted in some remedial action being taken. In 1989 these investigations led to the repayment to the charities of £301,000 and to the initiation of protective orders on charity assets.

35. Similarly the Liverpool Section recovered some £234,000 for charities in 1989. Cases currently under investigation there include the misapplication by trustees of some £400,000 unsuitably invested to finance the losses of various trading companies; loans of some £2 million made to trading companies directly connected with the charity trustees and at risk, together with accrued interest of some £700,000; and cases involving shareholders and trustees benefiting from the tax shelter offered by charitable status or disposals of property at substantial discounts (in one case estimated at £215,000).

36. The bulk of these investigations arose from information received from Inland Revenue, the police and the public. But the Commission is seeking increasingly to develop its internal system for monitoring (paragraphs 37 to 39).

(c) Monitoring

37. The Commission defines monitoring as the function of requesting and receiving information annually from all registered charities, and of processing and analysing that information to:

- provide information about charities to the public;
- prove the accountability of trustees; and
- discover abuse.

In practice the Commission will exercise a system of selective monitoring whereby it will request, process and analyse additional information from selected charities.

38. The Commission regards its monitoring as still being at an experimental stage and is in the early process of developing a soundly based system for selecting charities for examination. Current selection criteria include the value of transactions, the value and location of assets administered, and the types of charities and their social



importance. Under these arrangements the Commission has undertaken limited monitoring exercises in the Liverpool Office to examine categories of charities including the larger national charities, charities registered within the last 3–4 years, disaster funds, and those devoted to the advancement of religion. Of 3,148 accounts examined in these exercises in 1989 less than 10 per cent called for further enquiry and 18 cases (0.57 per cent) suggested serious abuse. However, the full extent and results are not yet known.

39. Following his appointment in September 1989 the head of the Commission's monitoring and investigation division introduced the pilot management information system referred to in paragraph 33 above. The new system, together with analysis of the results of monitoring and investigation, will provide information for the second phase of the computer system referred to in paragraph 8 above. Completion of the computer system in 1993–94 may lead to the re-deployment of some monitoring staff to investigation work. In addition, the procedures for rigorous scrutiny of applications for registration currently being tested are expected to lead to a more cost-effective use of resources.

#### (d) Sanctions

40. The Woodfield Report recognised that to achieve maximum impact against abuse the Commission needed additional powers, both to prevent malpractice and to intervene after the event. Recommendations of the Report which the Government propose for new legislation include:

- the exclusion from trusteeship of persons convicted of offences including fraud or dishonesty;
- a provision giving the Commission discretion to require a charity to have at least three trustees; and
- powers, in certain circumstances, for the Commissioners to appoint receivers and managers, to exercise scheme-making powers without an application of the trustees, and to transfer a charity's assets to another charity.

41. Legislation is also proposed to enable the Commission to take legal proceedings to recover charity property or to enforce obligations owed to charities. And the conditions required to take protective action under existing legislation will be simplified. Thus, where the Commission considers that there has been mismanagement or misconduct, or it considers it to be necessary or desirable, it will be able to vest property in the name of the Official Custodian, freeze bank accounts or transactions, suspend trustees or employees, and appoint a receiver or manager.

#### **Implementation of Woodfield Report recommendations**

42. The Woodfield Report confirmed the findings of the National Audit Office and recommended a number of wide-ranging reforms. The Committee of Public Accounts welcomed these recommendations and the Treasury Minute reported that, after Government acceptance of the Woodfield Report, the question of the resources needed to set up the

systems to implement these reforms was being considered. Appendix 3 lists the recommendations of the Woodfield Report together with the action taken or proposed to implement them.

## Conclusions

43. The Commission has responded positively to all the conclusions and recommendations of the Committee of Public Accounts and the Woodfield Report, with the backing of the Home Office and the Treasury. It has embarked on a strategy for structural and management reform which will not be fully effective before 1993-94, although some benefits are expected from 1990-91 onwards. Control of the management of the complex programme of changes has been vested in a new appointment to the Board of Management, and the installation of essential management information systems has begun. If successful, these measures, supported by necessary legislative changes, should put the Commission's operations on a more efficient and effective basis within the planned period.

44. However, the proposed changes and developments and the way in which they are interrelated present a severe management challenge for the Commission. And there are other initiatives within the strategy which are currently demanding its attention, such as the redeployment of a large number of staff to Taunton, preparing for the new legislation, and the divestment programme for the Official Custodian for Charities.

45. It is clearly essential for the success of this work, particularly the computerisation of systems, that the Commission should have sufficient staff with the necessary skills and experience. It is of some concern, therefore, that it has continued to experience difficulty in recruiting specialist staff, particularly in London. This underlines the importance of the Commission's present plans for transferring work from the London area and the need to consider whether further work should be transferred.

46. The difficulty experienced by the Commission in demonstrating that existing staff are being used efficiently should be overcome as the new management information systems for measuring output performance and productivity which are now being put in place are fully incorporated into the computerised database in 1993. In view of the urgent need to ensure that staff are employed in the most cost-effective way and to assess the value of the monitoring work carried out, it is essential that the Commission should give high priority to the development and introduction of these systems.

47. In response to the recommendations of the Committee of Public Accounts, resources employed on monitoring and investigation work have been increased by the redeployment of staff from other work and by recruitment. But no monitoring system can be fully effective until the computerised register is operating, legislative powers have been strengthened and staff have been suitably trained, with particular reference to accounting and investigative techniques. Until then, it will continue to be of concern that the majority of charities are failing to notify the Commission of changes to details on the register and to submit accounts.

48. The effective control of fraud and abuse and the Commission's ability to call in accounts and returns are dependent on new legislation. While timing is a matter for the Government to determine, the total size of charity business and the continuing evidence of abuse suggest that there would be value in ensuring that legislation is introduced within the lifetime of the present Parliament.



# Appendix 1

## Committee of Public Accounts:

### Extract from Sixteenth Report, Session 1987–88

### Monitoring and Control of Charities in England and Wales

4. Our main conclusions and recommendations are as follows:

(i) We are disturbed to learn that the Commission's register of charities is seriously out of date and unreliable and is ineffective for the monitoring and supervision of charities necessary to safeguard the interests of those benefiting from or contributing to their activities (paragraph 8).

(ii) We believe that, notwithstanding its resource difficulties, the Commission has adopted until recently a passive attitude to its registration responsibilities and the opportunities registration offers; and this must change (paragraph 8).

(iii) We are disturbed at the widespread failure of the Commission to obtain annual accounts from charities and to analyse and follow up such information. This undermines efficient and effective monitoring; and given the risks involved we find it difficult to accept that staff shortages are a satisfactory explanation for the present position, which seems to have existed for several years (paragraph 12).

(iv) We are gravely concerned at the risk of fraud, abuse and maladministration involved in the massive and increasing resources devoted to charities. We feel that the Commission is too complacent on this issue, given its lack of reliable information about the actual extent of abuse or maladministration (paragraph 16).

(v) We regard it as unsatisfactory that the Commission has not devoted greater resources to monitoring and investigation work and has never established a system of positive inspection of selected charities (paragraph 16).

(vi) Given the need for expert analysis of accounts and financial information, we are astonished that the Commission has no qualified accountants on its staff and apparently sees little need to recruit any (paragraph 16).

(vii) We note the Commission's much-repeated view that across all these matters it has been hampered by inadequate resources and the pressures arising from its statutory duty to provide advice and deal with modernisation of charity schemes. But we cannot accept this as sufficient justification for its failure to take more active steps to monitor and investigate charities and deal with charities failing to submit accounts (paragraph 17).

(viii) We note that, in contrast to the Commission's view, the Treasury thought there was scope for better deployment of existing staff through improved resource management systems; there was also support for this view from the work of the efficiency scrutiny team (paragraph 17).

(ix) We welcome the findings of the efficiency scrutiny which took place subsequent to the NAO examination. Many of the scrutiny team's

recommendations would require primary legislation and we strongly support the need for the legislation which the Government has now announced that it hopes to propose later in this Parliament. Nevertheless, prompt and vigorous action is needed without delay to improve supervision of charities within existing powers (paragraphs 18 and 19).

(x) We recommend that the Commission should take all possible and practicable steps not requiring legislation to secure necessary improvements, including computerisation of the charities register, publication of the names of charities failing to submit accounts, better and more frequent examination of accounts and follow-up investigations and firm remedial action where appropriate. There is a need for better training of investigative staff, together with a more positive attitude by senior management to this very important area of the Commission's responsibilities (paragraph 19).

## Appendix 2

### Change in staff resources between March 1987 and August 1990

Function	Staff in post		Increase/ (Decrease)	Shortfall in complement at August 1990
	March 1987	August 1990		
Commissioners	3	5	2	—
Legal Division	20	22	2	1
Secretariat	3.5	9	5.5	1
Monitoring and investigation	11.5	40.5	29	1
Registration	55	61	6	—
Charity modernisation schemes etc	51.5	64	12.5	6
Consents to property transactions	33	28	(5)	1
Official Custodian	81	86	5	1
Information technology	—	54	54	15
Establishments	72	114.5	42.5	3.5
Total	330.5	484*	153.5	29.5

\* This comprises the following grades or their equivalent:

	No.
Civil Service grade 3	2
" " " 4	3
" " " 5	7
" " " 6	11
" " " 7	21
Senior Executive Officer	30
Higher Executive Officer	51
Executive Officer	109.5
Other	249.5
Total	484†

† Includes 2 qualified accountants and 27 qualified lawyers.



# Appendix 3

## Implementation of Woodfield Report recommendations

Brief details are provided of the action taken or proposed in respect of each recommendation of the Woodfield Report. Recommendations which Woodfield believed did not need primary legislation are highlighted.

### Recommendations

1. The Chief Charity Commissioner should appoint a Project Officer, to report directly to him, to co-ordinate Commission work on matters arising out of this report.

2. The Home Office and the Charity Commission should review and clarify the division of responsibility between them; the direct accountability of the Chief Commissioner to the Home Secretary should be preserved.

### Organisation and management of the Charity Commission

3. Two additional part-time Commissioners should be appointed by March 1988.

4. The Commission should set up a top Management Board.

### Action Taken or Proposed

The Commission's Secretary was appointed Project Officer following the Scrutiny, and the Commission's Policy Division was strengthened to provide additional support to the Secretary in this role.

A review was carried out and completed by late 1987. The Chief Commissioner accounts direct to the Home Secretary through a new, formal procedure instituted in early 1988. The Commission provides a source of direct advice on policy issues for Home Office Ministers, and continues to work closely with the Home Office Voluntary Services Unit so as to develop and implement the Government's White Paper proposals for charity legislation. It is envisaged that this close relationship will continue to develop in the period following legislation.

Two part-time Commissioners were appointed in January 1989, following initial difficulties in identifying suitably qualified and willing candidates.

A new Board of Management was established in late 1987, and has since met monthly to assist the Commissioners to address questions of policy and principle affecting the management of the Commission, as distinct from the policy of the Commissioners in their quasi judicial capacity. A Management Executive was also established, to implement the decisions of the Board of Management.

## Recommendations

5. The Commission should, in conjunction with the Treasury, consider urgently the findings of the forthcoming Information Technology Strategy Study, according particular priority to the introduction of a Management Information System.

6. There should be more secondments of staff between the Commission and other Departments; and the Commission should examine the possibility of exchanges with charitable organisations.

## The Register and accounts

7. Section 4(4)(c) of the 1960 Act should be repealed, thus bringing under supervision charities with a small investment but a large turnover of money.

8. A graded system should be introduced if possible under existing legislative powers, for the submission of annual accounts and returns to the Commission; returns should include a narrative report and particulars of the charity trustee and correspondent.

9. All local charities should be required to send a copy of their accounts to the relevant local authority.

10. Charities should be obliged to furnish copies of their accounts to members of the public on payment of an appropriate fee.

11. The Commission should arrange suitable training for those staff who are engaged in examining annual accounts.

## Action Taken or Proposed

The Commission has embarked upon a complex programme for the introduction of Information Technology into appropriate areas of the Department. A comprehensive Management Information System is now in place in the Monitoring and Investigation Division on a trial basis; and an Information System Strategy Review is currently in progress to identify the Commission's needs in other Divisions and areas of work. Meanwhile, top management is provided with Quarterly Divisional Reports showing workload, output, productivity, and other performance measures. Performance is directly related to objectives, on a divisional and a departmental basis. (NAO Report paragraphs 33, 39 and 46 refer.)

The Commission has received six staff on secondments from other Government Departments. Two staff have been seconded out to other Government Departments, but acute shortages of experienced staff in the London Office have prevented further secondments out.

Proposals for the amendment of section 4(4)(c) of the 1960 Act have been included in the White Paper (paragraph 3.18). The spirit of this recommendation will be met, although not in precisely the way recommended by the Woodfield Report, by requiring the registration of any charity with an income of over £1,000 a year from whatever source.

The Commission considered that it was not possible to implement this recommendation under existing legislative powers. A graduated system for the preparation and submission of annual accounts has been proposed at paragraphs 4.12 to 4.15 of the White Paper. A Working Group was set up subsequently to consider in more detail the White Paper proposals, and its Report was finalised in March 1990. (NAO Report paragraphs 20 to 22 refer.)

The Government do not intend to implement this recommendation in legislation because proposals under recommendation 10 should significantly improve trustee accountability.

This recommendation has been included as a proposal for legislation in the White Paper (paragraph 4.31).

Staff in the Monitoring and Investigation Division have completed a basic training course, run by a large firm of City accountants, in the examination of charity accounts. Two qualified accountants recruited by the Commission since the Efficiency Scrutiny have specific training responsibility in respect of non-qualified staff, and a modular training programme, devised in-house, is under way both to provide general training in understanding accounting and auditing practices and to impart the specific skills needed by individual job-holders. (NAO Report paragraph 32 refers.)

**Recommendations**

12. The Commissioners should be able to deregister charities for failure to submit accounts.

**Action Taken or Proposed**

The Government do not intend to implement this recommendation because they consider that deregistration should be confined to loss of charitable status in law, and not used as a sanction for non-compliance by trustees. Alternative sanctions for failure to submit accounts, by marking the charity's entry on the register, have been proposed in the White Paper (paragraph 4.11), which meet the spirit of the Scrutiny recommendation. (NAO Report paragraph 18 refers.)

13. The Commission should require registration as a pre-condition for dealing with any business from a registrable charity.

This recommendation was rejected by the Government because there are circumstances where refusing to do business before registration is counter productive. However they agree with the spirit behind it. It continues to be the policy of the Commission to require registration before dealing with any business from a registrable charity, *except* in those cases where this would be against the charity's interests. (NAO Report paragraph 13 refers.)

14. The Commission's Register of Charities should be computerised.

Following consultants' recommendations for a Charity Database the existing Central Register Index has been computerised and became available for public use in October 1990. Entries will be brought and kept up-to-date by an annual requirement on every registered charity to confirm or amend all details of its entry (the 'annual return'), and to supply a copy of the most recent accounts. The annual return will also provide the Commission with information needed for monitoring and investigative purposes. After further developments, the Database will provide a case-tracking system and performance statistics needed by top management. (NAO Report paragraphs 8 to 11 refer.)

**Monitoring and Investigation**

15. Provision should be made that no person may without the permission in writing of the Commissioners act as the trustee of a charity if:

- (i) he has been convicted of any offence involving fraud or other dishonesty, or
- (ii) he has previously been removed by the Commissioners from trusteeship of a charity.

16. The Commissioners should be given discretion to require that a charity has a minimum of three trustees.

This recommendation has been included as a proposal for legislation in the White Paper (paragraphs 5.3 to 5.6). (NAO Report paragraph 40 refers.)

This recommendation has been included as a proposal for legislation in the White Paper (paragraphs 5.7 to 5.9). (NAO Report paragraph 40 refers.)



**Recommendations**

17. Section 20(1) of the 1960 Act should be amended to enable the Commissioners to act under (a) or (b) instead of both being required.

18. The various requirements on the Commissioners to give notice to trustees, and publicity to such notices, before exercising their powers under section 20 of the 1960 Act, should be repealed.

19. The Commissioners should be able to appoint trustees additional to the number required by a charity's trust instrument.

20. The Commissioners should be able to appoint a Receiver and Manager.

21. The Commissioners should be able to exercise their scheme-making powers without an application of the trustees.

22. The Commissioners should be able to wind up a charity and transfer its property to another charity.

23. The powers of the Commissioners in section 7(1) of the 1960 Act to call for documents and search records should be extended to allow the Commissioners to require explanations.

24. The Commission should examine the scope for further clarification of section 20 of the 1960 Act and make recommendations to the Home Secretary for any necessary changes. (See also 17 above.)

**Action Taken or Proposed**

The Government agree that the requirements to be satisfied before the Commissioners could use their powers of intervention under section 20(1) and (2) are too restrictive to protect charity property temporarily in circumstances where no breach of trust has been established. Following the examination carried out as a result of recommendation 24 below, the Government (White Paper paragraphs 5.11 to 5.16) propose to introduce in legislation a refined version of recommendation 17. (NAO Report paragraph 41 refers.)

This recommendation has been included as a legislative proposal in the White Paper (paragraph 5.15) in respect of the exercise of the Commissioners' protective powers but not, as the Scrutiny recommended, in respect of powers to remove trustees under section 20.

This recommendation has been included as a legislative proposal in the White Paper (paragraph 5.17). (NAO Report paragraph 40 refers.)

This recommendation has been included as a legislative proposal in the White Paper (paragraph 5.18). (NAO Report paragraph 40 refers.)

This recommendation, which will make it easier for the Commission to modernise the trust deeds or administration of charities, has been included as a legislative proposal in the White Paper (paragraph 5.19). (NAO Report paragraph 40 refers.)

This recommendation has been included as a legislative proposal in the White Paper (paragraph 5.19). (NAO Report paragraph 40 refers.)

This recommendation has been included as a legislative proposal in the White Paper (paragraph 5.24).

The review was carried out in 1988 and the results incorporated in Chapter 5 of the White Paper, proposing a distinction between those powers which are protective and temporary and those which are remedial and permanent. (NAO Report paragraphs 40-41 refer.)

**Recommendations****Advice, scheme-making, local reviews and the Charities Act 1985**

25. The Commission should continue to review the presentation and content of their leaflets, drawing up a programme to this end.

26. The objectives and working methods of the Commission's Charities Divisions should be reviewed.

27. The Commission should consult widely on possible ways of relaxing the *cy pres* doctrine and advise the Home Secretary whether legislation would be desirable.

28. Section 11 of the 1960 Act should be amended to allow the Commissioners to appoint persons to review local charities.

29. The Commission should as soon as practicable establish a local charity liaison section to promote and assist future local review work.

30. The Charities Act 1985 should be amended to increase its use by extending its application, increasing its monetary limits and simplifying its procedures.

**Action Taken or Proposed**

A programme was drawn up following the Scrutiny to improve the presentation and content of the Commission's leaflets. As a result, 32 of the Commission's 36 leaflets have now been revised and produced in a new format, and in each case attention has been given to simplifying the language used. A separate programme has also been drawn up to ensure that the advice given in the leaflets is authoritative and up to date.

A major review of the Charities Divisions had already been completed by the time the Scrutiny Action Plan was finalised, and a further review took place subsequently. As a result of these reviews internal procedures were made more efficient and considerable progress has been made to ensure a reduction in the amount of staff time devoted to the less essential tasks. A number of staff were released for work on dealing with abuse, and close attention continues to be paid to the efficiency of the Charities Divisions in anticipation of the extra demands which will result from the divestment of the Official Custodian and the introduction of the computerised Charity Database.

This review was carried out in early 1988 and a report made to the Home Secretary. The review concluded that legislation would not be appropriate – (paragraphs 6.17 to 6.19 of the White Paper). But new guidance has recently been given to staff on the flexible application of the *cy pres* doctrine, where for example the original purposes of trusts are out of date, and this advice is reproduced at paragraphs 73 to 75 of the Commissioners' Annual Report for 1989.

This recommendation has been included as a legislative proposal in the White Paper (paragraphs 6.1 and 6.2).

The Commission fully recognises the value of local reviews but in view of the urgency of dealing with abuse has not been able to give the establishment of a local charity liaison section high priority. However, a bid has been made for two additional staff to provide the nucleus of a team to promote a country-wide local review initiative as soon as legislation is in place.

The Act aimed to remedy deficiencies in the administration and effectiveness of small charities and local charities for the relief of poverty. The Scrutiny recommendation has been included as a legislative proposal in the White Paper (Chapter 4 and paragraphs 6.3 to 6.11).

**Recommendations**

31. The second publication of notices of schemes made by the Commissioners should no longer be required.

32. Where a charity does not have a properly constituted trustee body the Commissioners should be able to make a scheme of their own volition.

33. The Commission should advise the Home Secretary of the outcome of discussions with interested parties on the regulation of maintenance contributions in almshouses.

34. The Commission should prepare model governing instruments for wide general use by founders of new charities.

**Action Taken or Proposed**

The recommendation was rejected by the Government after careful consideration because of implications for the appeals procedure — the second notice not only informs interested parties that a scheme has been established it also announces that the statutory three month time limit for bringing an appeal to the High Court has come into effect. (White Paper paragraph 6.13.)

This recommendation has been included as a legislative proposal in the White Paper (paragraphs 6.14 to 6.16).

A report was made to the Home Secretary in July 1988, and legislative proposals made in paragraph 6.20 of the White Paper. Pending legislation, the Commission is in discussion with other Government Departments with a view to agreeing a formula which would enable the maximum amount of the weekly contribution to be revised from time to time without the need for the Commissioners to approve the actual maximum contribution to be charged in individual cases.

The task of formulating model governing instruments to cover the most common forms of legal structure used for charities has proved more complex than anticipated. The legislative and other changes in the Commission's registration and monitoring procedures have persuaded the Commission that the format of the model governing instrument should be fundamentally re-examined, and the Commissioners have recently agreed in principle a number of such models. These will be made available shortly, following further minor refinements.

**Consent to land transactions**

35. Section 29 of the 1960 Act should be repealed and replaced by provisions requiring trustees to follow statutory procedures for selling land.

36. The Trustee Investments Act 1961 should be amended to allow trustees to purchase land for investment purposes without the need for an order of the Commissioners under section 23 of the 1960 Act.

This recommendation has been included as a legislative proposal in the White Paper (Chapter 7).

The Government indicated their agreement in principle with this recommendation at paragraph 7.17 of the White Paper. However, proposals for more radical amendments to the 1961 Act are under consideration by several Government Departments and in the meantime the Commissioners are meeting the spirit of the recommendation by a more liberal use of orders conferring a general authority on trustees of appropriate charities to purchase investment property.



**Recommendations**

37. The Commission should make every effort to reduce staff resources currently deployed on consents work.

**Action Taken or Proposed**

Since the Scrutiny reported, the number of staff employed in consents work has been reduced by 18% through the more widespread application of excepting orders; but there is no scope for further reductions until legislation is passed.

**Official Custodian for Charities**

38. The Commission should cease to encourage charities to use the services of the Official Custodian.

Since the Scrutiny reported the Official Custodian has refused to accept any business from charities not already in his books, or new business from existing client charities unless they are obliged by their trusts to use the Official Custodian's investment services.

39. The Commission should employ consultants to work out a scheme and programme for returning investments held by the Official Custodian to trustees; the specification should be drawn to make it possible for key decisions to be taken by the end of 1987. Giving effect to any changes would mean amending the 1960 Act.

The government announced in November 1988 their intention to abolish the Official Custodian's investment function. Consultants had been employed to recommend a programme for divestment, and legislative proposals for putting the divestment programme into effect are described in the White Paper (Chapter 8).

**Charging by the Charity Commission**

40. The Commissioners should be enabled to introduce charges for new registrations, the services of the Official Custodian if he is retained and for residual work on consents to property transactions.

This recommendation has been included as a legislative proposal in the White Paper (Chapter 9).

**Malpractice in fund-raising**

41. It should be an offence for a fund-raising practitioner to deduct his remuneration (however calculated) from donations received before paying them to the charity unless he can prove that his intention to do so was made clear to every donor; if such an offence is committed it should be open to the court, in addition to imposing penalties, to determine that the sums deducted be paid to such charity as the court may determine.

The Government propose to introduce a legislative requirement that all those who receive funds raised for or on behalf of a charity should remit the full amount to the charity without deducting fees or expenses (White Paper paragraph 10.18).

42. Provision should be made that, whenever goods or services are advertised or offered for sale with an indication that some part of the proceeds is to be devoted to charity, there shall be specified:

The Government propose to introduce a legislative requirement that basic information must be provided, where the public are being invited to make a purchase on the grounds that it will benefit charity, so as to make clear the true benefit which will accrue to the charity as a result of the transaction (White Paper paragraph 10.19).

(1) the charity or charities that are to benefit and, if more than one, in what proportion and

(2) the manner in which the sums they are to receive are to be calculated.

## Recommendations

43. A charity should be able in certain circumstances to obtain an injunction against the use of its name by a named person or organisation.

44. The Home Office and the Charity Commission should review the legislation relating to public collections in consultation with representatives of the local authorities and make recommendations to the Home Secretary.

45. The War Charities Act 1940 as extended should be repealed.

## Scotland and Northern Ireland

46. The Scottish Home and Health Department, in consultation with other interests, should advise the Secretary of State for Scotland on which provisions applying in England and Wales now or in the future should be extended to Scotland.

## Action Taken or Proposed

This recommendation has been included as a legislative proposal in the White Paper (paragraph 10.1).

The legislation was reviewed as recommended and in September 1988 the Home Office issued a consultation paper "The Regulation of Charitable Appeals in England and Wales". As a result legislative proposals to curb abuse have been included in the White Paper (Chapter 10).

This recommendation has been included as a legislative proposal in the White Paper (paragraphs 10.3 and 10.4).

Provisions relating to charities in Scotland are contained in Part 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Bill, which was introduced in December 1989. This provides for the Inland Revenue to make public those bodies recognisable as charities for tax purposes in Scotland, introduces accounting and auditing requirements for those charities, and gives the Lord Advocate powers of investigation and remedy through the Courts.

## Reports by the Comptroller and Auditor General Session 1990-91

The Comptroller and Auditor General has to date, in Session 1990-91, presented to the House of Commons the following reports under Section 9 of the National Audit Act, 1983:

Monitoring and Control of Charities in England and Wales .....	HC 13
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